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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Lourdes Castaneda Sanchez and	)	CASE No. CV 09-08477-RGK(PLAx)
Jose Luis Sanchez,	)	
	)	<b>Order and Judgment RE:</b>
Plaintiffs,	)	
	)	<b>Court Trial</b>
v.	)	
	)	
United States of America,	)	
	)	
Defendant.	)	
_____	)	

**I. INTRODUCTION**

Lourdes Sanchez ("Sanchez") and her brother Jose Sanchez ("Jose") filed suit on November 18, 2009, against Christina Gomez ("Officer Gomez"), who was later substituted with the United States ("Defendant"). Plaintiff alleges a cause of action for negligence against Defendant, and Jose alleges a cause of action for negligent infliction of emotional distress ("NIED") against Defendant.

Trial of this case commenced on February 2, 2011. The present opinion explains the Court's findings of fact and conclusions of law.

1 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 This opinion serves as the findings of fact and conclusions of  
3 law required by Rule 52 of the Federal Rules of Civil Procedure. Any  
4 finding of fact that constitutes a conclusion of law is adopted as  
5 such, and the converse is true as well.

6  
7 **A. Findings of Fact**

- 8 1. In the early morning of February 16, 2008, Jose parked across the  
9 street from Verdugo Hills Convalescent Hospital in Glendale and  
10 dropped off Sanchez.
- 11 2. Sanchez proceeded to step off the curb, walk a couple of steps,  
12 and began running across the street in the marked crosswalk  
13 toward the Verdugo Hills Convalescent Hospital.
- 14 3. Officer Gomez, while acting in the scope and employment of the  
15 United States as an FBI agent, struck Sanchez while she was  
16 halfway through the crosswalk.
- 17 4. Jose, who was parked next to the crosswalk at the time of impact:  
18 a. Saw Officer Gomez's headlights approaching Sanchez;  
19 b. Was not worried for Sanchez's safety when he saw Officer  
20 Gomez's vehicle;  
21 c. Did not see the actual collision, but heard it and knew that  
22 Sanchez had been hit; and  
23 d. Stepped out his vehicle after hearing the collision and saw  
24 Sanchez lying on the ground, trembling, and bleeding from  
25 the head.
- 26 5. Officer Gomez, immediately before she struck Sanchez:  
27 a. Had trouble seeing because the street and its surroundings  
28 were poorly lit;

- b. Failed to see Sanchez until she was about a car's length from the sidewalk;
  - c. Saw that Sanchez was wearing dark colored clothing;
  - d. Was driving with her headlights on; and
  - e. Was traveling approximately 35 miles per hour.
6. There were two pedestrian crossing warning signs — one traffic sign warning of the approaching crosswalk and the other traffic sign identifying the crosswalk.
7. Since the collision:
  - a. Sanchez had undergone multiple surgeries and physical therapy, and suffered, among other things: traumatic brain injury, physical and mental deficiencies, and seizures;
  - b. Maria Salazar ("Salazar") cared for Sanchez as a Certified Nursing Attendant ("CNA") and has been paid over \$250,000 by Sanchez's Counsel ("Sanchez Counsel");
  - c. Sanchez has acted visibly frustrated when she could not perform simple tasks like tying her shoes or removing her clothes;
  - d. Jose received and paid a lot of different medical bills; and
  - e. Jose experienced depression, anxiety, insomnia, and nightmares of Sanchez lying and trembling on the ground or of Sanchez with tubes all over her body; Jose visited the psychologist three or four times for his insomnia.
8. As a result of the collision:
  - a. Sanchez has severely limited communicative abilities, limited ambulatory movement, no cognitive ability, no memory of the collision, no ability to form long-term memories, and

- 1 no awareness of her cognitive impairments;
- 2 b. Sanchez is able to experience present moment sensations and
- 3 emotion, including pain and frustration;
- 4 c. Sanchez has a 53 year life expectancy;
- 5 d. Sanchez will remain in a dependent, "child-like" mental
- 6 state for the rest of her life and will require 24 hour
- 7 care, 7 days a week for the rest of her life; and
- 8 e. Sanchez will require future medical care, which include
- 9 regular check-ups with doctors, counseling sessions,
- 10 physical and speech therapy, and shunt adjustments.
- 11 9. Sanchez does not need skilled nursing care; either assisted
- 12 living or around-the-clock, in-home, CNA care at a rate of \$15 to
- 13 \$16 per hour is adequate to meet Sanchez's future attendant
- 14 needs.
- 15 10. Proper medical care will substantially reduce Sanchez's need for
- 16 future extensive surgical care and lower the likelihood of future
- 17 seizures, medical complications, and resulting physical pain and
- 18 suffering.
- 19 11. Sanchez's future mental pain and suffering is substantially
- 20 mitigated by her inability to recall anything from the past, look
- 21 to the future, and recognize her physical and cognitive
- 22 impairment relative to what she used to have.
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1        **B.     Conclusions of Law**

2        **1.     Sanchez's Negligence Claim**

3            **a.     *Liability***

4                    **i.     Defendant Is Presumed Negligent Under the**  
5                    **Doctrine of Negligence Per Se**

6            Under the doctrine of negligence per se, negligence is presumed  
7            if the plaintiff establishes four elements: (1) the defendant violated  
8            a statute, ordinance, or regulation of a public entity; (2) the  
9            violation proximately caused death or injury to person or property;  
10           (3) the death or injury resulted from an occurrence of the nature of  
11           which the statute, ordinance, or regulation was designed to prevent;  
12           and (4) the person suffering the death or the injury to his person or  
13           property was one of the class of persons for whose protection the  
14           statute, ordinance, or regulation was adopted. *Galvez v. Frields*, 88  
15           Cal. App. 4th 1410, 1420 (2001). The first two elements are normally  
16           questions for the trier of fact and the latter two elements are  
17           determined by the court as a matter of law. *Id.*

18           As to the first two elements, Cal. Veh. Code Section 21950(a)  
19           ("Section 21950(a)") states in relevant part, "The driver of a vehicle  
20           shall yield the right-of-way to a pedestrian crossing the roadway  
21           within any marked crosswalk." Witnesses on both sides testified that  
22           Sanchez was halfway through a marked crosswalk when Officer Gomez's  
23           vehicle struck her. Moreover, expert witnesses on both sides testified  
24           that the collision resulted in, among other things, Sanchez's  
25           permanent brain damage, severe mental and physical deficiencies, and  
26           need for constant around-the-clock care for the rest of her life.  
27           Therefore, the Court finds that (1) Defendant violated Section  
28           21950(a); and (2) the violation proximately caused Sanchez's injury.

1 The third and fourth elements are also satisfied. There is no  
2 question the statute was designed to protect pedestrians from death or  
3 injury on California's streets and highways. See Pedestrian Safety Act  
4 of 2000 § 2, 2000 Cal. Legis. Serv. 833 (West 2000). As a pedestrian  
5 crossing the road, Sanchez falls within the class of persons for whose  
6 protection the statute was adopted.

7 Since all the elements are met, the Court finds a presumption of  
8 negligence on the part of Defendant.

9 **ii. Defendant Fails to Rebut the Presumption of**  
10 **Negligence**

11 The presumption of negligence may be rebutted "by proof that the  
12 person violating the statute, ordinance, or regulation did what might  
13 reasonably be expected of a person of ordinary prudence, acting under  
14 similar circumstances, who desired to comply with the law." Cal. Evid.  
15 Code § 699(b) (2004).

16 Defendant argues that it is not negligent because Officer Gomez  
17 acted reasonably and could not have done anything to avoid the  
18 accident. To support this argument, Defendant introduced evidence that  
19 the driving condition was dark, the area was poorly lit, Officer Gomez  
20 was attentive while driving the speed limit, and Sanchez was wearing  
21 dark clothes while crossing the crosswalk. However, the posted speed  
22 limit functions only as a suggested speed limit for optimal  
23 conditions; drivers may not drive faster than is reasonable, taking  
24 into consideration factors such as visibility. See Cal. Veh. Code §  
25 22350 (1963). Thus, while evidence indicates that Officer Gomez drove  
26 the speed limit, evidence regarding the driving conditions at that  
27 time of day suggests that her driving speed may have been unsafe.  
28 Moreover, based on the evidence presented during trial, there were two

1 traffic signs warning of the pedestrian crosswalk — one sign  
2 providing warning of the approaching crosswalk and the other sign  
3 identifying the crosswalk. There was no evidence that Officer Gomez  
4 slowed down to look for pedestrians, despite the two traffic signs. In  
5 light of the foregoing, the Court finds Defendant fails to offer  
6 adequate proof to rebut the presumption of negligence.

7 **iii. There Is No Comparative Negligence**

8 California has adopted a "pure" form of comparative negligence.  
9 *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 827 (1975). The pure form of  
10 comparative negligence, which apportions liability in direct  
11 proportion to fault, is applicable to cases of statutory violations.  
12 See *Sagadin v. Ripper*, 175 Cal. App. 3d 1141, 1167-68 (1985).

13 Defendant suggests that if it is held liable for negligence, some  
14 fault of the collision should be apportioned to Sanchez because she  
15 violated California Vehicle Section 21950(b)<sup>1</sup> by running in the path  
16 of Officer Gomez. Defendant's evidence shows: (1) Sanchez stepped off  
17 the curb, took a couple of steps, and started running in the  
18 crosswalk; and (2) Jose saw Officer Gomez's vehicle approaching  
19 Sanchez, but was not concerned for Sanchez's safety. It is reasonable  
20 to expect a prudent and attentive pedestrian to notice a car with its  
21 lit headlights coming her way and act appropriately to avoid it.  
22 Nonetheless, Defendant's evidence is simply too sparse and  
23 insufficient to conclude that Sanchez's actions warrant a finding of  
24 comparative liability.

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25  
26 <sup>1</sup> California Vehicle Code Section 21950(b) states in  
27 relevant part: "This section does not relieve a pedestrian from  
28 the duty of using due care for his or her safety. No pedestrian  
may suddenly leave a curb or other place of safety and walk or  
run into the path of a vehicle that is so close as to constitute  
an immediate hazard."

1 In sum, the Court finds that Defendant is negligent for Officer  
2 Gomez's vehicle striking Sanchez and is fully liable for the resulting  
3 damages.

4 **b. Damages**

5 **i. Past Medical and Attendant Care Costs**

6 Sanchez is entitled to recover the reasonable costs of necessary  
7 medical and attendant care expenses ("past expenses"). See Cal. Civ.  
8 Code § 1431.2(b)(1). On its face, the amount Sanchez seeks appears  
9 commensurate to the extent and severity of Sanchez's injuries.  
10 Unfortunately, Sanchez Counsel failed to properly present evidence  
11 relating to Sanchez's past expenses, substantially limiting the amount  
12 of damages the Court can legally award.

13 Court records indicate that defense counsel made repeated  
14 requests for past expenses before, during, and after discovery.  
15 Despite the fact that the parties were given six months for discovery,  
16 Sanchez Counsel did not attempt to provide such evidence until just  
17 before trial. Competent evidence of the medical expenses was never  
18 introduced because Sanchez Counsel never laid proper foundation for  
19 this evidence. During trial, Sanchez Counsel introduced a "Medical  
20 Provider and Expense Summary" ("the Document"), which allegedly  
21 provided a comprehensive list of Sanchez's past expenses. (Pl's Ex.  
22 95.) Jose, who purportedly paid the medical bills, could not verify  
23 either the procedures performed, or his payment of the specific  
24 amounts reflected in the Document. On re-cross, Sanchez Counsel  
25 inexplicably attempted to rehabilitate Jose's testimony with evidence  
26 that Sanchez Counsel showed Jose the Document and told Jose that the  
27 items contained in the Document were the medical bills. In light of  
28 Sanchez Counsel's failure to properly lay foundation for this



1 evidence, the Court simply cannot consider the Document as competent  
2 evidence for purposes of determining damages.

3 In addition to the Document, Sanchez Counsel introduced the  
4 following: (1) Dr. Mobius's testimony that he billed Sanchez \$44,658  
5 for her past shunt adjustments; (2) Dr. Ramin's testimony that he  
6 billed Sanchez \$12,001 for her past internal medical care; and (3)  
7 Salazar's testimony that she was paid over \$250,000 for providing CNA  
8 care to Sanchez. This evidence amounts to \$306,659 in past medical and  
9 attendant care expenses.

10 The Court notes this additional evidence is also problematic.  
11 First, Sanchez Counsel, again, failed to establish that Jose actually  
12 paid the amounts billed by Drs. Mobius and Ramin. Second, as to the  
13 Salazar expense, the evidence indicates only that the amount was paid  
14 by Sanchez Counsel. Sanchez Counsel provided no further testimony  
15 indicating that Sanchez would ultimately be responsible for repaying  
16 the amount expended by Sanchez Counsel. Nonetheless, the Court finds  
17 this additional evidence more reliable than the Document. As to the  
18 doctors' bills, it is reasonable to presume that the amounts Drs.  
19 Mobius and Ramin testified to billing is the amount owed. Jose's  
20 testimony that he received and paid a lot of medical bills lends  
21 additional credence to such presumption. As to the Salazar payments,  
22 it reasonable to presume that the payments were not made gratis,  
23 particularly in light of no circumstantial evidence indicating  
24 otherwise. Where inferences of competency can be made regarding this  
25 additional evidence, no such inference can be made as to the Document.

26 In light of Sanchez Counsel's missteps, it is impossible for the  
27 Court to determine the amount of past expenses Sanchez has actually  
28 borne. Sanchez's multiple brain surgeries, hospitalization, and

1 physical therapy sessions suggest that her expenses far exceed the  
2 \$306,659 testified to by the two doctors and Salazar. Had Sanchez  
3 Counsel properly introduced a complete listing of Sanchez's past  
4 expenses, the Court would have awarded them accordingly.

5 Unfortunately, the doctor's testimonies, Jose's statement that he paid  
6 a lot of bills, and Salazar's testimony are the only evidence this  
7 Court can rely on in calculating her past expenses. As previously  
8 discussed, the Court recognizes that reliance on these testimonies is  
9 barely sufficient grounds to justify any award. However, the Court  
10 also recognizes that completely barring Sanchez from any recovery for  
11 her substantial past expenses due to the mistakes of her legal counsel  
12 defeats the principles of justice and equity. Hence, this Court awards  
13 \$306,659 in damages to Sanchez for past expenses.

14  
15 **ii. Future Medical and Attendant Costs**

16 Both parties agree that Sanchez will require significant future  
17 care and 24 hour attendant care, 7 days a week for the rest of her  
18 life. However, the parties dispute the level of care required. Both  
19 parties submitted separate life-care plans that proposed different  
20 amounts of future medical care costs and varying attendant care  
21 options.

22 With respect to Sanchez's future medical care costs, the Court  
23 finds that the \$1,643,118 contained in Defendant's life-care plan is  
24 appropriate and the net discount rate used to calculate this total is  
25 proper. Defendant's life-care plan accounts for Sanchez's essential  
26 needs during her 53 year life expectancy, including \$1,020,855 for  
27 professional services, \$109,791 for equipment and supplies, \$54,931  
28 for labs and diagnostics, \$69,955 for medications, \$352,934 for

1 hospitalizations and surgical procedures, and \$34,652 for  
2 miscellaneous items. (Def's Ex. 239.)

3 With respect to Sanchez's future attendant care, the parties'  
4 life-care plans present three different attendant care options:  
5 skilled nursing facility, assisted living facility, and in-home care.  
6 Based on the evidence presented in trial, the Court finds: (1) Sanchez  
7 does not need skilled nursing care; (2) the reasonable cost of 24 hour  
8 in-home care from a CNA is \$16 per hour; (3) the present value of in-  
9 home care using Defendant's net discount rate and Plaintiff's 53 year  
10 life expectancy is \$3,746,521; (4) the present cash value of an  
11 assisted living facility using the same net discount rate and life  
12 expectancy is \$3,333,416. Considering this evidence, and taking  
13 Sanchez's circumstances into consideration, the Court takes the larger  
14 of the two values, i.e., \$3,746,521, to provide Sanchez the  
15 flexibility of choosing either in-home care or assisted living care.

16 Based on the foregoing, Sanchez's estimated future medical and  
17 attendant care costs total \$5,389,639. However, the Court recognizes  
18 that calculating the exact future needs of an individual in Sanchez's  
19 circumstances is difficult and imprecise. Therefore, to cover any  
20 variables that may have been unaccounted for, the Court hedges on the  
21 side of caution and awards \$5,500,000 in damages to Sanchez for her  
22 future medical and attendant care costs.

### 23 24 **iii. Pain and suffering**

25 General damages are awarded as compensation for physical pain,  
26 fright, nervousness, grief, anxiety, worry, mortification, shock,  
27 humiliation, indignity, embarrassment, apprehension, terror, or  
28 ordeal. *Niles v. City of San Rafael*, 42 Cal. App. 3d 230, 244 (1974).

1 These terms are difficult to translate into monetary loss, and it is  
2 up to the trier of fact to resolve. *Id.* A trier of fact may infer that  
3 an individual felt pain if the trier of fact knows through common  
4 experience that pain follows such an injury. *See Capelouto v. Kaiser*  
5 *Found. Hosps.*, 7 Cal. 3d 889, 894 (1972).

6 While Sanchez's lack of cognitive ability and retention of memory  
7 may mitigate her pain and suffering, they do not bar her from feeling  
8 such pain and suffering. *See id.* Therefore, damages for such injury is  
9 recoverable. *See id.* Since the collision, Sanchez has had multiple  
10 brain surgeries, seizures, and shunt adjustments. Expert witnesses  
11 testified that Sanchez felt painful headaches prior to each shunt  
12 adjustment. Moreover, based on common experience, it is reasonable to  
13 assume that Sanchez experienced substantial pain associated with her  
14 various surgeries and process of rehabilitation. In addition,  
15 Sanchez's frustration with her inability to tie her shoes and take off  
16 her clothes demonstrates a measure of understanding that she has lost  
17 her ability to do certain tasks. In light of these circumstances, the  
18 Court awards \$2,000,000 in damages for Sanchez's past pain and  
19 suffering.

20 Sanchez will also encounter future pain and suffering. She will  
21 need regular shunt adjustments to deal with ongoing headaches. Sanchez  
22 will remain in a dependent state for the rest of her life. Therefore,  
23 to the extent she suffers mental anguish from the loss of her ability  
24 to perform basic tasks, such pain will likely continue, as her  
25 physical circumstances will not improve significantly. Based on the  
26 evidence, however, the bulk of Sanchez's future physical pain should  
27 be limited so long as Sanchez receives proper care. Moreover, most of  
28 Sanchez's future mental pain is mitigated by the fact that she is

1 unable to recall anything from the past, look to the future, and fully  
2 recognize her cognitive impairment. Given the totality of the  
3 circumstances, the Court awards \$1,000,000 in damages for Sanchez's  
4 future pain and suffering.

5 For Sanchez's past and future pain and suffering, the Court  
6 awards \$3,000,000.

7 In sum, the Court awards Sanchez \$8,806,659 in total damages for  
8 Defendant's negligence.

9  
10 **2. Jose's NIED Claim**

11 A plaintiff may recover damages for emotional distress  
12 caused by observing the negligently inflicted injury of a third person  
13 if the plaintiff: (1) is closely related to the injury victim; (2) is  
14 present at the scene of the injury-producing event at the time it  
15 occurs and is then aware that is causing injury to the victim; and (3)  
16 as a result, suffers serious emotional distress. *Thing v. La Chusa*, 48  
17 Cal. 3d 644, 667-68 (1989).

18 The first two elements are not at issue. Jose, who is Sanchez's  
19 brother, was present at the scene when Officer Gomez's vehicle struck  
20 Sanchez. Jose knew that Sanchez had been hit upon hearing the impact  
21 and saw Sanchez lying and trembling on the ground immediately after  
22 Sanchez had been hit.

23 As to the third element, evidence indicates that Jose has had  
24 nightmares involving Sanchez's lying and trembling on the ground with  
25 tubes in her body. Jose also has had trouble sleeping, has seen a  
26 psychologist three or four times to address his insomnia, and feels  
27 depressed and anxious.

1 Damages for Jose's emotional distress can be awarded only for  
2 injury that directly results from the injury-producing event at the  
3 time it occurs. See *id.* at 668. Injury sustained as a result of events  
4 occurring after the accident (e.g., surgeries, recovery, etc.), and  
5 the hardship involved in caring for Sanchez is not recoverable. See  
6 *id.* Based on Jose's testimony, it appears that his emotional distress  
7 is mostly the product of caring for Sanchez, not the product of  
8 experiencing the collision. Jose explained that his level of  
9 depression and anxiety depends on whether Sanchez's condition is  
10 improving or not. Jose's nightmares, which were a major cause of his  
11 insomnia, had images of Sanchez lying and trembling on the ground,  
12 which relates directly to the accident. However, such nightmares also  
13 included images of seeing Sanchez with tubes all over her body, which  
14 alludes to Sanchez's state after the collision, while she was in the  
15 hospital. Moreover, Jose's own testimony indicates that the  
16 nightmares, in general, have diminished.

17 Based on Jose's testimony, Jose's emotional distress directly  
18 arising from experiencing Sanchez's collision is less extensive than  
19 the emotional distress he has experienced as a result of the  
20 aftermath. As a result, the Court awards \$20,000 in damages to Jose.

### 21 22 **III. CONCLUSION**

23 Based on the foregoing, the Court grants judgment in favor of  
24 Sanchez and Jose. The Court finds in favor of Sanchez and Jose as  
25 follows:

- 26 1. The Court finds Defendant negligent and fully liable for the  
27 injuries sustained by Sanchez as a result of the accident.

- 1 2. The Court awards Sanchez a total of \$8,806,659 in damages; which  
2 is the sum of:  
3 a. \$306,659 in damages for her past medical and attendant care  
4 expenses;  
5 b. \$5,500,000 in damages for her future medical and attendant  
6 care costs  
7 c. \$2,000,000 in damages for her past pain and suffering; and  
8 d. \$1,000,000 in damages for her future pain and suffering.  
9 3. The court awards Jose total of \$20,000 in damages for his NIED  
10 claim.  
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12 **IT IS SO ORDERED.**  
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15 March 23, 2011  
16 Date  
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R. Gary Klausner  
U.S. District Judge